IN THE HIGH COURT OF JUDICATURE

ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NO :11745 of 2006

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Dated: 15th June 2006.

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Between:

M/s Krebs Biochemicals & Industries Limited

..... PETITIONER

AND

Assistant Commissioner (CT) LTU, Nellore and others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE D.APPA RAO

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W.P.NO.11745 OF 2006

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ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

Aggrieved by a decision of the Joint Commissioner, Commercial Tax, Hyderabad, dated 30-05-2006, by which an application, filed by the petitioner seeking stay of collection of the tax in dispute, was rejected, the present writ petition is filed.

The case of the petitioner is that the sale transaction in issue, in the appeals are the sales of DEPB licenses (formerly called as REP licenses) issued under the provisions of the Customs Act, therefore, necessarily, there is no sale of goods, as contemplated under the A.P.G.S.T. Act.

The learned counsel for the petitioner Sri S.Krishna Murthy, submits that though the Supreme Court earlier held that such REP licenses are goods within the meaning of the expression defined under the Sales Tax Act, in view of the subsequent judgment of a Constitutional Bench of the Supreme Court in SUNRISE ASSOCIATES v. GOVERNMENT OF NCT OF DELHI & OTHERS , the earlier decision must be held to be, impliedly, overruled.

In our view, there is a specific question of law, which requires an examination and a strong *prima facie* case in favour of the petitioner.

In the circumstances, the impugned order dated 30-05-2006 is modified. Therefore shall be interim stay of recovery of the tax demanded from the petitioner, during the pendency of the appeal, on condition of the petitioner depositing Rs.3:00 lakhs within a period of six weeks from today.

With the above direction, the writ petition is disposed of, at the stage of

admission.

J.Chelameswar, J

D.Appa Rao, J

15th June 2006

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